
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Assessment and Collection of Regulatory) MD Docket No. 98-200
Fees for Fiscal Year 1999)

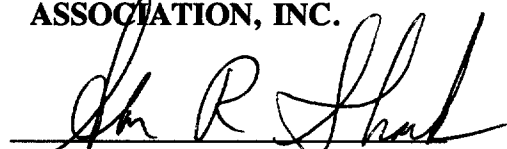
To: The Commission

COMMENTS OF AMERICAN MOBILE TELECOMMUNICATIONS, INC.

Respectfully submitted,

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January 7, 1999

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.^{1/} The Notice seeks comment on certain unresolved issues relating to the FCC's annual regulatory fee assessment program, including clarification of the Commercial Mobile Radio Services ("CMRS") fee categories and demarcation of which types of services or usage to include in each category. NOI at ¶ 4. AMTA commends the FCC for initiating its inquiry on this issue, and urges the agency to implement a fee program that accurately and fairly reflects the diversity of the CMRS community.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz specialized mobile radio ("SMR") service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. These members provide commercial wireless services throughout the country, either as CMRS or Private Mobile Radio Services ("PMRS") operators, depending on whether their systems are interconnected with the Public Switched Network ("PSN").^{2/}

2. As the Association has advised the Commission in several earlier-filed comments on the regulatory fee program, AMTA believes that the current delineation among categories of CMRS services results in an inequitable financial obligation on certain industry segments,

^{1/} Notice of Inquiry, MD Docket No. 98-200, FCC 98-298 (rel. Dec. 4, 1998) ("NOI" or "Notice").

^{2/} See, 47 U.S.C. § 332(d).

including many of the Association's CMRS members. AMTA is pleased, therefore, to have a further opportunity to provide the FCC with comments on this issue.

II. BACKGROUND

3. Section 159 of the Communications Act authorizes the Commission to collect regulatory fees to recover the costs of the FCC's enforcement activities, policy and rulemaking activities, user information services, and international activities. Subsection (b)(A) of that provision specifies that the fees assessed shall be adjusted:

to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.^{3/}

4. In its initial consideration of the appropriate regulatory fees for CMRS services, the FCC determined that all such systems should be subject to the same per subscriber unit payment.^{4/} AMTA objected to that decision on the basis that many of the CMRS systems operated by the Association's members provide limited, ancillary interconnection capability. The vast majority of subscriber units on the systems are only capable of dispatch communications, i.e., messages transmitted between a dispatcher and a mobile unit(s) or among mobile units, with no access to the PSN at all. Some units, usually those operated by the customer's owner or manager, also are equipped with interconnection capability, albeit typically not of toll quality, which is used in connection with the business activities of the subscriber. The Association argued that because the FCC's definitions of CMRS versus PMRS dictated that a system with only a single

^{3/} 47 U.S.C. § 159(b)(A).

^{4/} Report and Order, MD Docket No. 96-84, 63 CR 739 at ¶ 22.

interconnected unit nonetheless be categorized as CMRS, the per unit regulatory fee should be assessed only against units with the capability of accessing the PSN.

5. The Commission has never adopted AMTA's position, but in 1997 the agency did modify its heretofore monolithic approach to CMRS regulatory fees.^{5/} In response to requests from various parties, the FCC replaced its CMRS One-Way Paging fee category with a CMRS Messaging Services fee classification. In doing so, the agency specifically noted:

The distinguishing characteristic between the CMRS Mobile Services fee category and the CMRS Messaging Services fee category will be the amount of bandwidth that we have authorized. Our bandwidth distinction is consistent with the fee schedule enacted by Congress and by our own prior fee schedules that assess fees based upon the quality of the channels provided to licensees.^{6/}

The Commission further explained its decision as follows:

...our fee schedule for CMRS will not consider the particular use made of a licensee's spectrum and will consider the nature of services offered only to the extent that services offered on broadband spectrum and services offered on narrowband spectrum will be subject to different categories of fee payment.^{7/}

The agency did not explain how it defined broadband versus narrowband spectrum for this purpose, and did not identify which CMRS services it considered to fall within each category.

6. Subsequently, in its 1998 regulatory fee proceeding, the FCC noted that several parties had indicated there was confusion in determining which services were subject to CMRS

^{5/} Report and Order, MD Docket No. 96-186, 10 CR 418 (1997) ("1997 Report and Order").

^{6/} 1997 Report and Order at ¶ 61.

^{7/} Id.

Mobile Services, as opposed to CMRS Messaging Services, fees.^{8/} The Commission again stated that it would look to the nature of the spectrum, i.e., whether broadband or narrowband, rather than the particular service provided in differentiating the two classifications and proposed the following categorization:

CMRS Mobile Services:

- Rural Radio Services
- Air-ground Radiotelephone Service
- Cellular Radiotelephone Service
- Offshore Radiotelephone Service
- Broadband Personal Communications Services
- Wireless Communications Service
- Specialized Mobile Radio Service
- Public Coast Service

CMRS Messaging Services:

- Paging and Radiotelephone Services
- Narrowband Personal Communications Services
- 220-222 MHz Band
- Interconnected Business Radio Services^{9/}

7. Again, the FCC failed to explain on what quantitative or qualitative analysis it had based its broadband versus narrowband distinction, although it acknowledged that AMTA and other SMR licensees had requested reconsideration of its FY 1997 decision that CMRS regulatory fees would be predicated on whether the authorized spectrum was broadband or narrowband.^{10/} The Commission reiterated that it was not inclined to consider regulatory fee assessments on a

^{8/} Notice of Proposed Rulemaking, MD Docket No. 98-36, 12 CR 2013 (1998) ("1998 NPR").

^{9/} Id. at ¶¶ 29-30.

^{10/} Id. at ¶ 31.

case-by-case basis because of the burden that approach would impose on its limited resources.^{11/} Subsequently, in response to comments recommending additional revisions to the FCC's approach to the CMRS fee issue, the Commission announced that it did not have an adequate record to further modify CMRS fee categories, but stated that it would address these issues in a forthcoming Notice of Inquiry, as it now is doing in the instant NOI.^{12/}

8. AMTA recognizes that the FCC has spent considerable time in recent years calculating the regulatory fees for services under its jurisdiction and reconciling them with the annual Congressionally-dictated total fee to be collected. The Association also commends the Commission for responding to certain proposals to modify its fee categories, and thereby assess more equitably among licensee category the fees to be collected. As detailed below, AMTA believes that further refinements of the CMRS regulatory fee categories will better ensure that they conform to the Congressional directive that the fees imposed be consistent with the benefit to the payor and with the public interest.

III. THE COMMISSION SHOULD REVISIT ITS DELINEATION OF BROADBAND VERSUS NARROWBAND CMRS SYSTEMS FOR REGULATORY FEE PURPOSES

9. In the 1998 Report and Order, the Commission specifically rejected an argument that all CMRS licensees should pay the same regulatory fee to ensure regulatory symmetry and thereby avoid the opportunity for competitive advantages for certain service categories. The FCC stated:

^{11/} Id.

^{12/} Report and Order, MD Docket No. 98-36, 12 CR 392 (1998) ("1998 Report and Order").

The statutory fee schedule makes plain that Congress in enacting the regulatory fee program contemplated that our fee levels would recognize the benefit of the spectrum authorized to licensees in the various services.^{13/}

10. AMTA agrees with the Commission's determination, and believes it to be consistent with the approach taken in non-CMRS services as well. For example, the regulatory fees for Commercial AM and FM Radio already recognize a difference between stations based on the populations covered within their protected service areas.^{14/} Stations with larger potential audiences are assessed larger fees than those able to reach smaller populations even though both categories presumably share proportionately in the costs of FCC rulemaking, enforcement and other activities regulatory fee assessments are intended to cover.

11. The CMRS regulatory fee classifications already reflect a comparable delineation: the current fee structure acknowledges that "narrowband" systems provide a lesser benefit to the licensee/payor than "broadband" authorizations since more spectrum, particularly more contiguous spectrum, enables an operator to provide a greater variety of services to a larger number of subscribers.^{15/} AMTA concurs with this basic tenet; it disagrees with the FCC's current delineation of which CMRS systems enjoy broadband versus narrowband status.

^{13/} 1998 Report and Order at ¶ 47.

^{14/} Id. at ¶ 31.

^{15/} There are, of course, certain regulatory functions that the FCC must undertake for all CMRS systems, whether classified as Mobile or Messaging Services, for example, the Public Notice process. However, as in the case of Commercial AM and FM Radio, the Commission already has determined that it is appropriate to distinguish among CMRS services for purposes of assessing regulatory fees based on the additional factors referenced in Section 159 of the Act.

12. In earlier comments on various regulatory fee schedules, the Association urged the FCC to revise its narrowband/broadband CMRS categories and to adopt the recommendation of BellSouth Wireless Data, L.P. ("BellSouth") that the "broadband" CMRS category include only those systems authorized to use at least 42 channels or 2.1 MHz of spectrum.^{16/} BellSouth subsequently suggested that authorizations of 25 kHz or less of spectrum be included as Messaging services, or that a third CMRS category be established for systems in services that are allocated no more than 5 MHz of spectrum.^{17/}

13. AMTA has already explained that traditional SMR licenses were granted either five 25 kHz channels at 800 MHz or ten 12.5 kHz channels at 900 MHz, in either case a total of 250 MHz of spectrum. Typical systems today still are authorized for only ten or fifteen channels with a bandwidth of no more than 500 kHz to 750 kHz. This capacity is more closely analogous to services such as 220 MHz (25 kHz) and narrowband PCS (up to 50 kHz) already classified as "narrowband" CMRS Messaging Services than it is to the cellular (25 MHz) or broadband PCS (10 or 30 MHz) systems included in the CMRS Mobile Services category.

14. In fact, the FCC recently acknowledged that the typical 800 MHz or 900 MHz SMR system is not comparable to cellular or broadband PCS in terms of capacity or capabilities:

[t]he best indicator of an SMR provider's ability to compete with wireless and wireline providers in the two-way, real-time voice market is whether the provider's

^{16/} See, Reply Comments of AMTA, filed May 4, 1998.

^{17/} Comments of BellSouth, filed April 22, 1998.

system has in-network switching capability...carriers who lack switch capability would not be competitive in this market.^{18/}

The practicality of investing in switching capability is related directly to the amount of authorized spectrum since the marketplace advantages of a switched system cannot be realized without a reasonable amount of spectrum to support it.

15. AMTA believes that the same analysis is applicable to CMRS regulatory fee classifications. The benefits to the payor that Congress directed the Commission to consider in establishing its fee schedules dictate that traditional SMR systems be classified as Messaging/narrowband, rather than Mobile/broadband, Services. The enormous disparity between the capacity of these systems, versus cellular or broadband PCS, cannot support a determination that the benefits realized by the licensees are in any respect comparable. Therefore, AMTA recommends that the Commission revise its rules to reflect that traditional SMR systems at 800 MHz and 900 MHz are classified as CMRS Messaging Services for purposes of regulatory fee assessments. Alternatively, the FCC should follow the approach recommended by BellSouth and create a third CMRS classification for 800 MHz SMR, 900 MHz SMR and any other CMRS services with comparable spectrum allocations.

16. The Notice also asks for comment on how the Commission might determine with some reasonable degree of precision the number of feeable units within each category. Notice at ¶ 9. For purposes of the SMR and other specialized wireless services referenced above, the Association recommends that the FCC rely on the annual report published by the Strategis Group

^{18/} Second Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, 13 FCC Rcd ___ at ¶ 52 (rel. Oct. 20, 1998).

in cooperation with AMTA, The State of SMR and Digital Mobile Radio. The Strategis Report includes substantial information about digital and traditional SMR usage, including data in respect to historical unit growth within each band segment and projections for future usage. This information should provide the FCC with a sound basis on which to estimate the likely number of feeable units within these various CMRS services, and, thus, a basis for regulatory fee calculations.

IV. CONCLUSION

17. AMTA supports the Commission's efforts to establish an equitable regulatory fee structure, consistent with express Congressional directives. The Association looks forward to working with the FCC to develop appropriate CMRS regulatory fees for the diverse CMRS industry.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this January 7, 1999, caused to be hand delivered a copy of the foregoing Comments to the following:

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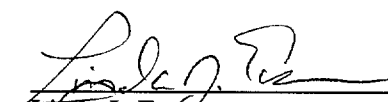
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